Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In the

Supreme Court of the United States

KARI CAMPBELL and JOHN BLAKLEY,
Petitioners,

v.

SEARS ROEBUCK AND CO., a New York Corporation licensed to do business in Illinois,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITION FOR WRIT OF CERTIORARI

MARK F. CYR
Counsel of Record
The Law Office of
Mark F. Cyr, P.C.
329 18th Street, Suite 300
Rock Island, Illinois 61201
(309)786-0707
Attorney for Petitioners

28 pp

QUESTION PRESENTED

1. Is a state law which is arbitrarily and capriciously applied in violation of settled principles of law and contrary to undisputed facts violative of due process and equal protection rights under the Fourteenth Amendment because it unlawfully denies access to the courts.

LIST OF PARTIES

The parties to this proceedings are Petitioners Kari Campbell and John Blakley; and Respondent Sears Roebuck and Co.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioners, Kari Campbell and John Blakley respectfully pray for a Writ of Certiorari to the Supreme Court of Illinois issue to review the judgment of the Appellate Court of Illinois entered in the this case on March 27, 2001.

OPINIONS BELOW

The unpublished Order of the Supreme Court of Illinois, rendered on July 23, 2001, is attached hereto as Appendix A. Prior thereto, the opinions in this case were the unpublished Decision of the Supreme Court of Illinois, rendered on June 6, 2001, which is attached hereto as Appendix B; the unpublished Order of the Appellate Court of Illinois, Third District, dated March 27, 2001, which is attached hereto as Appendix C; the unpublished Order of the Illinois Circuit Court, Fourteenth Judicial Circuit, dated April 20, 2000, which is attached hereto as Appendix D; and the unpublished Order of the Illinois Circuit Court, Fourteenth Judicial Circuit, dated March 30, 2000, which is attached hereto as Appendix E.

JURISDICTION

The Judgment of the Supreme Court of Illinois was entered on July 23, 2001. This Judgment is final for purposes of review by this Court. This Petition for Writ of Certiorari has been timely filed pursuant to the Order of Continuance entered by this Honorable Court, dated October 11, 2001. The jurisdiction of the Supreme Court is invoked under *28 U.S.C. 1257(a)*.

Pursuant to the Proof of Service filed herewith, and pursuant to *28 U.S.C. Sec. 2403(b)*, a copy of all documents

shall be served upon the Attorney General for the State of Illinois. It is Petitioners' belief that the Court has not previously notified the Attorney General of the State of Illinois that a constitutional question regarding Statute was drawn into question.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant provisions of the *Fourteenth Amendment* are also set forth in Appendix F.

STATEMENT OF THE CASE

This Petition for Writ of Certiorari is concerned with the Trial Court's granting of Summary Judgment in favor of Respondent with respect to Counts XIII through SVIII.

In summary fashion, these Counts allege that both Petitioners had been employed by Sears; that in August of 1997, Petitioners were investigated by Sears because of complaints on the Sears ethics hotline concerning an alleged close personal relationship between the two Petitioners. As a result of that investigation, the employment of both Petitioners was terminated. The relevant Counts of the Third Amended Complaint claim negligent investigation by Sears (Counts XIII and XIV); negligent infliction of emotional distress based on the negligent investigation (Counts XV and XVI); and intentional infliction of emotional distress (Counts XVII and XVIII).

Defendant's Motion for Summary Judgment and Plaintiffs' Response have excerpts from deposition transcripts.

As of 1997, Petitioners Campbell and Blakley were employees at a Sears service center in Moline, Illinois.

Blakley was the district service manager in charge of the Moline service center. Petitioner Campbell was the routing manager. Campbell reported to John Maldonado who in turn reported to Petitioner Blakley.

During the summer of 1997, there were complaints made regarding alleged inappropriate behavior between Petitioners Campbell and Blakley. The complaints were that Petitioner Campbell was not following the appropriate chain of command; that Petitioner Blakley was allowing Campbell to make decisions that were not within her authority; that Campbell and Blakley were taking excessively long lunches together; that Campbell had been seen "feeding Blakley in public with her own utensil" in the presence of other employees; that various Sears employees had been told by a hotel employee that Plaintiff Campbell had requested adjoining rooms for her and Blakley during a Sears business trip.

"Anonymous" phone calls were made to a special hotline maintained by Sears to receive employee concerns and complaints regarding Petitioners' inappropriate behavior. Greg Flock who is the regional service manager for the Moline region and Blakley's immediate supervisor, when to Moline and interviewed the Petitioner. Mr. Flock was concerned that Petitioners were not forthcoming in their responses to his questions, so he referred the matter back to the business group personnel department recommending further investigation.

The matter was then referred to Joseph Lakis of the Sears compliance department, to conduct further investigation. He came to Moline with David Cross. He interviewed several employees including both Petitioners. Lakis reported the results of the investigation to Flock who in turn advised Petitioners that their employment was terminated.

Mr. Lakis testified that there was no company policy allowing inclusion of an independent co-employee from the same unit as the interviewee during the interview. Attached to Petitioners' response to the Motion for Summary Judgment was a portion of the participant's manual which states a preference for a person from the same group as the employee with the complaint. It is stated in this manual that "this reduces the perception of possible interviewer bias." Mr. Lakis further testified, that to his knowledge nowhere in the Sears material is there a document which defines "a close personal relationship".

Regarding the alleged request for adjoining rooms in the Cedar Rapids hotel, Mr. Lakis testified that neither he nor anybody from his department actually interviewed the hotel employee who would have been involved in the registration for that day. He did not interview Allen Campbell who is the husband of Petitioner Campbell. Furthermore, Mr. Lakis testified that he did not interview Deb Allis, who worked for a Cedar Rapids Se4ars unit and who would have made the accommodations for the Cedar Rapids hotel for the seminar that the Moline unit was attending.

John Maldonado testified in his deposition that he never called the ethics hotline. However, Greg Flock testified that two of the anonymous callers were John Maldonado and John Thurwinger. John Maldonado, as of the time of his deposition, was the district service manager for Moline, replacing Petitioner Blakley. John Maldonado, as district manager, replaced Petitioner Campbell with John Thurwinger.

Campbell testified that upon being advised of the allegation that she had requested adjoining rooms at a Cedar Rapids hotel, she told Mr. Lakis that she wanted to see the hotel receipt. She denied having a sexual relationship with John Blakley and denied asking for adjoining hotel rooms

while on a business trip. Petitioner Campbell testified that she felt someone from her unit should have been allowed to sit in on the interview. With respect to an accusation that her car was seen in the parking lot after hours with the suspicion that possibly she and Petitioner Blakley were in the building alone or had gone somewhere in Petitioner Blakley's car, she testified that her car was in the shop, and had been in the shop for two weeks. She offered to provide Mr. Lakis documentation as to that. She testified that she and Petitioner Blakley were at her house when no one was home, she testified that here husband was home as well as her daughter who was sick and she did not believe that Mr. Lakis or any investigator from Sears looked into that by interviewing her husband. When shown her personnel file represented as being her entire personnel file, she testified that it did not appear to be her complete file, and that reviews were missing. She further testified that in 1996 and 1995, John Thurwinger had attempted to have a romantic relationship with her but she rebuffed it.

Petitioner Blakley reviewed his personnel file at his deposition and testified that it was not a complete file.

Respondent's Reply to the Petitioners' Response and Resistance to the Motion for Summary Judgment with respect to the Counts alleging negligent investigation was that there is no duty on employers in Illinois to conduct any investigation, let alone a "full and complete investigation."

Following argument, the Court, on March 30, 2000, entered an Order granting Respondent's Motion for Summary Judgment. Petitioners timely filed a Motion to Reconsider on April 14, 2000. Said Motion to Reconsider was denied on April 20, 2000. Petitioners timely filed their Notice of Appeal on May 18, 2000.

The Appellate Court of Illinois, Third District, affirmed the Circuit Court's Ruling on March 27, 2001. See Appendix C. The Appellate Court of Illinois rejected Petitioners' argument that the exceptions set forth under *Doe v. Goff, 306 Ill. App. 3d 113, 716 N.E.2d 323 (1999)* should stand in a civil case as it does in a criminal proceeding. The specific exceptions as outline in *Goff* are:

> The employer has a duty to investigate thoroughly if the employer:
>
> (1999) created a separate branch of the organization to deal with employee complaints;
> (2000) established detailed procedures regarding complaints; and
> (2001) developed a hot-line to handle complaints.
>
> In its ruling, the Appellate Court of Illinois stated:
>
> "We decline to adopt such a rule. The exception noted in *Goff* applies only to the question of liability for the criminal acts of third persons and is therefore not relevant to an employment termination case..."
>
> In his specially concurring opinion, Justice McDade stated:
>
> "...I do believe that if an employer (1) creates a separate branch of the organization to deal with employee complaints; (2) establishes detailed procedures regarding complaints; and (3) develops a hotline to handle complaints, the employer should recognize that it has some responsibility to undertake an objective and thorough investigation of complaints prior to discharge. I do not mean by this concurrence to suggest that the investigation done in this case was

> deficient, but merely to point out that out decision not to adopt the particular rule shought is not tantamount to creating a rule that employers can encourage coworker-bashing with impunity."

In Petitioners' argument to the Supreme Court of Illinois, they argued that the protections and immunities provided an employer with respect to its conduct towards employees at will is not absolute. The First District recently recognized a cause of action by at will employees against their employer based on the tort of "intrusion upon seclusion". *Johnson v. K-Mart Corporation, (1st Dist. 2000) 243 Ill.Dec. 591, 311 Ill.App.3d 573, 723 N.E. 2d 1192, Appeal allowed 246 Ill.Dec. 123, 729 N.E. 2d 496.* There, employees of K-Mart brought an action alleging that the employer had placed private detectives within the workforce, posing as employees, to solicit highly personal information from the employees, thereby invading their privacy. In affirming the cause of action based on intrusion upon seclusion, the First District relied upon the Court's decision in *Melvin v. Burling, (3rd Dist. 1986) 95 Ill.Dec. 919, 141 Ill.App.3d 786, 490 N.E. 2d 1011.*

However, the Supreme Court of Illinois affirmed the Ruling of the Appellate Court of Illinois on June 6, 2001.

Petitioners' Motion for Leave to File a Motion for Reconsideration of the Order Denying the Petition for Leave to Appeal was denied by the Supreme Court of Illinois on July 23, 2001.

REASONS FOR GRANTING THE WRIT

1. This case presents an important issue involving the administration of justice. Access to the courts is a fundamental right. *Gentile v. State Bar of Nevada, 501 U.S. 1030, (1991).* It is unfair to apply state rules of procedure in

an arbitrary manner. Doing so precludes citizens from access to the courts.

2. The decision below conflicts with this Court's decision in *Postal Telegraph Cable Co. v. Newport, Kentucky, 247 U.S. 464 (1918).* In *Postal Telegraph Cable Co.*, this Court established that, even in private litigation, courts may not arbitrarily and capriciously make decisions affecting the lawsuit's outcome in violation of settled principles of law and contrary to undisputed facts. To do so violates the Fourteenth Amendment's due process and equal protection clauses. *See, Williams v. Tooke, 108 F.2d 758, 759 (5th Cir.), cert. den., 311 U.S. 655 (1940)*

CONCLUSION

For all of the reasons stated, this petition for writ of certiorari should be granted.

Respectfully submitted,

Mark F. Cyr
The Law Office of Mark F. Cyr, P.C.
329 - 18th Street, Suite 300
Rock Island, Illinois 61201
Phone: (309)786-0707
Facsimile: (309)793-4090
Counsel for Petitioners
November 20, 2001

APPENDIX A

SUPREME COURT OF ILLINOIS
Supreme Court Building
Springfield 62701

July 23, 2001

Mr. Mark F. Cyr
The Law Office of Mark F. Cyr, P.C.
329 - 18th Street, Suite 300
Rock Island, IL 61201

In re: Kari Campbell et al., petitioners, v.
Sears Roebuck and Co., etc., respondent.
No. 91337

Today the following order was entered in the captioned case:

Motion by petitioners for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Motion Denied.

Order entered by the Court.

Mandate has issued forthwith to the Appellate Court, Third District.

Very truly yours,

/s/ Juleann Hornyak
Clerk of the Supreme Court

cc: Mr. Arthur L. Klien
Mr. Martin H. Katz
Dated this 1st day of December, 2000.

APPENDIX B

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
91337 SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217)782-2035

June 6, 2001

Mr. Mark F. Cyr
The Law Office of Mark F. Cyr, P.C.
329 - 18th Street, Suite 300
Rock Island, IL 61201

No. 91337 - Kari Campbell et al., petitioners, v. Sears Roebuck and Co., etc., respondent. Leave to appeal, Appellate Court, Third District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 28, 2001.

APPENDIX C

3-00-0402
APPELLATE COURT THIRD DISTRICT OTTAWA

Campbell and Blakley
v. Sears Roebuck & Co.

At a term of the Appellate Court, begun and held at Ottawa, on the 1st Day of January in the year of our Lord Two Thousand one, within and for the Third District of Illinois:

Present -

HONORABLE THOMAS J. HOMER, Presiding Jusitice	X
HONORABLE PEG BRESLIN, Justice	X
HONORABLE TOM M. LYTTON, Justice	
HONORABLE WILLIAM E. HOLDRIDGE, Justice	
HONORABLE MARY W. McDADE, Justice	X
HONORABLE KENT SLATER, Justice	

GIST FLESHMAN, Clerk

BE IT REMEMBERED, that afterwards on March 27, 2001 the Order of the Court was filed in the Clerk's Office of said Court, in the words and figures following viz:

No. 3–00–0402

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2001

KARI CAMPBELL and	)	Appeal from the Circuit
	)	Court of the 14 Judicial
JOHN BLAKELY,	)	Circuit Rock Island
	)	County, Illinois
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 98–L–35
	)	
SEARS ROEBUCK AND CO., a New York Corporation licensed to do business in Illinois,	)	Honorable
	)	Ronald C. Taber,
Defendant-Appellee.	)	Judge Presiding

ORDER

The trial court granted summary judgment in favor of Sears Roebuck and Co. (Sears) on counts 13 through 18 of plaintiffs' complaint which allege: (1) intentional infliction of emotional distress; (2) negligent infliction of emotional distress; and (3) negligent investigation of coworker complaints. Plaintiffs appeal.

FACTS

Kari Campbell and John Blakley, Jr. (plaintiffs) were at-will employees of Sears. Campbell's immediate supervisor was John Maldonado and Maldonado's supervisor was Blakley. Coworkers complained to an anonymous hot-line that plaintiffs were taking long lunches together with Campbell feeding Blakley from her utensils, that plaintiffs had requested adjoining hotel rooms during a business trip, and that Blakley was permitting Campbell to ignore the appropriate chain of command.

Sears conducted an investigation of the complaints. Greg Flock, Blakley's immediate supervisor, interviewed the plaintiffs. Concerned that the plaintiffs had not been forthcoming, Flock recommended further investigation by the personnel department. The matter was then referred to Joseph Lakis, an employee within the Sears compliance department. Lakis interviewed plaintiffs and several other Sears employees and reported the results of his investigation to Flock. Flock then terminated plaintiffs' employment.

In deposition testimony, Lakis admitted that neither he nor any other employee in his department had interviewed any hotel employees regarding plaintiffs' alleged request for adjoining rooms. Lakis also testified that he had not interviewed Campbell's husband. Flock testified that Maldonado was one of the anonymous callers. Maldonado was promoted to Blakley's position following Blakley's termination.

Plaintiffs' third amended complaint alleges, inter alia, that Sears completed its investigation negligently because it: (1) failed to interview all the necessary witnesses; (2) failed to investigate the motives of the coworkers who complained; (3) failed to record the interviews of the plaintiffs; and (4) failed to allow an impartial witness from plaintiffs' unit to be present during their interviews.

Sears' motion for summary judgment was granted by the trial court. Plaintiffs appeal.

ANALYSIS

Summary judgment is properly granted when the pleadings, depositions, admissions, and affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2–1005 (West 1998). When considering a trial court's entry of summary judgment, this court conducts de novo review. Tyler Enterprises of Elwood, Inc. v. Skiver, 260 Ill. App. 3d 742, 748, 633 N.E.2d 1331, 1336 (1994).

Plaintiffs conceded during oral arguments before this court that they have waived any argument regarding the claims for intentional infliction of emotional distress by failing to address that issue in their brief. Consequently, we affirm summary judgment in favor of Sears as to counts 17 and 18.

Plaintiffs' remaining claims for negligence and for negligent infliction of emotional distress rely on the proposition that Sears can be held liable for negligently investigating complaints. Plaintiffs acknowledge that an employer may fire an at-will employee for any reason or for no reason at all. Fellhauer v. City of Geneva, 142 Ill. 2d 495, 505, 568 N.E.2d 870, 875 (1991). Plaintiffs further concede that an employer has no duty to investigate prior to terminating an at-will employee. See Harrison v. Sears Roebuck and Co., 187 Ill. App. 3d 980, 546 N.E.2d 248 (1989). Relying on language in this court's opinion in Doe v. Goff, 306 Ill. App. 3d 1131, 716 N.E.2d 323 (1999), however, plaintiffs argue than an employer can voluntarily assume a duty to exercise ordinary and reasonable care in investigating complaints.

In Goff, a plaintiff sued the Boy Scouts based on molestation by a Boy Scout volunteer. We affirmed summary judgment in favor of the Boy Scouts based on the well-established rule that a party is generally not liable for the criminal acts of a third person. Goff, 306 Ill. App. 3d at 1134, 716 N.E.2d at 326. In dicta, however, this court went on to acknowledge an exception to the general rule of non-liability contained in section 324A of the Restatement (Second) of Torts (Restatement (Second) of Torts §324A (1965)). Goff, 306 Ill. App. 3d at 1136, 716 N.E.2d at 327. Under that exception, a party may be held liable for the criminal acts of a third person if the party: (1) created a separate branch of the organization to deal with security; (2) established detailed procedures regarding security; and (3) developed a hot-line to handle security matters.

Plaintiffs urge us to apply these three criteria in crafting a new exception to the established rule that an employer may terminate an at-will employee for any reason or for no reason at all. Plaintiffs urge us to adopt a rule that an employer has a duty to investigate thoroughly if the employer (1) created a separate branch of the organization to deal with employee complaints; (2) established detailed procedures regarding complaints; and (3) developed a hot-line to handle complaints.

We decline to adopt such a rule. The exception noted in Goff applies only to the question of liability for the criminal acts of third persons and is therefore not relevant to an employment termination case. Consequently, the trial court properly granted summary judgment in favor of Sears.

CONCLUSION

Fore the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

Affirmed.

HOMER, P.J., with BRESLIN, J., concurring and McDADE, J. specially concurring.

No. 3–00–0402

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2001

KARI CAMPBELL and	)	Appeal from the Circuit
	)	Court
JOHN BLAKELY,	)	of the 14 Judicial Circuit
	)	Rock Island County, Illinois
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 98–L–35
	)	
SEARS ROEBUCK AND CO.,)		
a New York Corporation	)	
licensed to do business in	)	
Illinois,	)	Honorable
	)	Ronald C. Taber,
Defendant-Appellee.	)	Judge Presiding

JUSTICE McDADE, specially concurring:

I agree with the decision of the panel for the reasons stated in the opinion. I write specially to indicate that, while I do not think that we should adopt a rule such as that proposed by plaintiffs, I do believe that if an employer (1) creates a separate branch of the organization to deal with

employee complaints; (2) establishes detailed procedures regarding complaints; and (3) develops a hotline to handle complaints, the employer should recognize that it has some responsibility to undertake an objective and thorough investigation of complaints prior to discharge. I do not mean by this concurrence to suggest that the investigation done in this case was deficient, but merely to point out that our decision not to adopt the particular rule sought is not tantamount to creating a rule that employers can encourage coworker-bashing with impunity.

STATE OF ILLINOIS)
APPELLATE COURT,) ss.
THIRD DISTRICT)

As Clerk of the Appellate Court, in and for said Third District of the State of Illinois, and keeper of the Records and Seal thereof, I do hereby certify that the foregoing is a true, full and complete copy of the opinion of the said Appellate Court in the above-entitled cause, now of record in this office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court at Ottawa, this 27th day of March in the year of our Lord two thousand one.

(SEAL)

/s/ Gist Fleshman
Clerk of the Appellate Court

APPENDIX D

IN THE CIRCUIT COURT OF THE FOURTEENTH
JUDICIAL CIRCUIT OF ILLINOIS
ROCK ISLAND COUNTY
_____ DIVISION

CAMPBELL,	)	
	)	
Plaintiff,	)	
	)	
vs	)	CASE NO. 98 L 35
	)	
SEARS,	)	
	)	
Defendant.	)	

ORDER

This cause coming to be heard on Plaintiffs Motion to Reconsider Summary Judgment Order of March 30, 00, AND Plaintiffs Motion to Vacate order of March 30, 00, due notice having been given and the Court being fully advised of the premises: IT IS HEREBY ORDERED THAT:

Plaintiffs Motion to Reconsider is denied. Plaintiffs Motion to Vacate is denied.

/s/ Ron Taber

JUDGE OF THE
FOURTEENTH
JUDICIAL CIRCUIT
4-20-00

OK MFC
For Plfs.
OK M.H.K.

APPENDIX E

IN THE CIRCUIT COURT OF THE FOURTEENTH
JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS
COUNTY DIVISION

KARI CAMPBELL and JOHN BLAKLEY, Jr.,	)	
Plaintiffs,	)	No. 98 L 35
v.	)	
SEARS ROEBUCK AND CO., a New York corporation licensed to do business in Illinois; NORMAN FEE; and ROXANNE JACKSON,	)	(filed March 3, 2000)
Defendants.	)	

ORDER AND JUDGMENT

This matter coming before the Court on Defendants' Motion for Summary Judgment as to all counts of Plaintiffs' Third Amended Complaint, due notice having been given, the parties having submitted briefs, the Court having heard oral argument and being fully advised in the premises,

IT IS HEREBY ORDERED:

1. Plaintiffs having dismissed Counts I-XII, the same are dismissed with prejudice; and

2. For the reasons set forth in Defendants' Motion for Summary Judgment and Supporting Memorandum, Reply Brief, and in oral argument, summary judgment is granted to the defendants as to all remaining counts, Counts XIII through XVII.

/s/ Ron Taber
Hon. Ronald C. Taber

3-30-00
Date

OK AS TO FORM
MFC For Plfs.
Approved as to Form
MHK for Defs.

APPENDIX F

UNITED STATES CONSTITUTION

Fourteenth Amendment

[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.